

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-015684

02/02/2021

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
K. Treftz
Deputy

EDET EFFIONG ASUQUO

EDET EFFIONG ASUQUO
1701 W TUCKEY LN # 201
PHOENIX AZ 85015

v.

LA FUENTE CONDOMINIUM ASSOCIATION

JONATHAN S WALLACK

ALTERNATIVE DISPUTE
RESOLUTION - CCC
JUDGE J. SMITH

MINUTE ENTRY

East Court Building – Courtroom 814

8:45 a.m. This is the time set for a telephonic Status Conference regarding Plaintiff's Appeal from Arbitration and Motion for Trial Setting (filed 12/23/2020). Plaintiff, Edet E. Asuquo is present on his own behalf. Defendant, La Fuente Condominium Association, is represented by counsel, Jonathan S. Wallack.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the status of the case, the Minute Entry dated February 1, 2021, and trial scheduling matters.

For the reasons stated on the record,

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IT IS ORDERED that all discovery shall be complete no later than **March 20, 2021**.

Mr. Wallack makes an oral request for a short trial.

Mr. Asuquo objects to a short trial.

Mr. Wallack states that Mr. Asuquo has not provided a Rule 26.1 disclosure statement or responded to Defendant's discovery request.

For the reasons stated on the record,

IT IS FURTHER ORDERED that the parties shall meet and confer by telephone regarding the aforementioned documents requested by Mr. Wallack.

Further discussion is held regarding alternative dispute resolution.

Pursuant to agreement of the parties,

IT IS FURTHER ORDERED that the parties shall participate in a mandatory settlement conference. This case is referred to the Court's Alternative Dispute Resolution (ADR) Department for the appointment of a judge *pro tempore* to conduct a settlement conference. The judge *pro tempore* is requested to conduct the settlement conference no later than **June 4, 2021**. ADR will issue a notice of appointment of judge *pro tempore* no later than 90 days prior to the deadline to conduct the settlement conference.

Unless the *Judge Pro Tempore* orders otherwise, all parties and counsel of record, must appear in person at the settlement conference.

IT IS FURTHER ORDERED setting this matter for a 3-Day **Trial to a Jury** commencing on **August 23, 2021 at 9:30 a.m.** in this division before:

**HONORABLE JAMES SMITH
MARICOPA SUPERIOR COURT
EAST COURT BUILDING
101 W. JEFFERSON STREET
8th FLOOR-COURTROOM 814
PHOENIX, AZ 85003
(602) 372-5945**

Scheduled trial dates are: **August 23 – 25, 2021**.

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This trial is double-booked over a previously scheduled trial. If the other trial settles or vacates for any reason, this matter will be heard in this Division. If the longer trial does not vacate, this matter will be referred to case transfer and will be heard in another Division.

Trial days are normally Monday through Thursday from 9:30 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m., with a mid-morning and mid-afternoon break.

Counsel and any self-represented party shall appear at **9:00 a.m.** in this division for the first day of trial.

Note that the Court reserves for itself **one day** for jury selection, preliminary and final instructions, and jury deliberations.

NOTE: This is a firm trial setting. Motions to continue based on lack of preparation will ordinarily not be granted.

IT IS FURTHER ORDERED setting a **Final Trial Management Conference** on **July 23, 2021 at 10:00 a.m.** (1 hour reserved). Trial counsel and any self-represented party shall appear *in person* for the conference. This minute entry order sets forth tasks that must be completed. All tasks that this minute entry imposes on “counsel” apply to self-represented litigants.

THE COURT NOTES that the parties are limited to the list of witnesses and exhibits provided for the arbitration hearing.

IT IS FURTHER ORDERED all Exhibits to be offered at trial shall be delivered before **3:00 p.m., August 9, 2021.** For exhibit submission, please visit, <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. The webpage will provide instructions and guidance as well as locations for in-person submission of exhibits. Exhibit Guidelines for this division are attached herein.

9:20 a.m. Matter concludes.

Based upon the foregoing trial setting,

DUTIES PRIOR TO FINAL TRIAL MANAGEMENT CONFERENCE

A Joint Pretrial Statement (“JPTS”) must be filed no later than **July 13, 2021.** **Plaintiff must deliver its portions of the JPTS to all other parties at least 20 days before the due date; all other parties must deliver their portions no later than 15 days before the due date. Ariz. R. Civ. P. 16(f)(1).** In addition to the materials required by Arizona Rule of Civil Procedure

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16(f)(2), counsel shall meet before the Final Trial Management Conference in order to discuss and prepare the following, which shall be filed with or included in the JPTS:

- A. Proposed *voir dire* questions.
- B. A completed Witness Information Form (attached), setting forth a list of all witnesses each party intends to call at trial in the order in which the party intends to call the witness, together with the estimated time needed for direct, cross, and redirect examinations.
- C. A joint set of agreed-upon jury instructions and verdict forms. Each party shall provide separate sets of any requested instructions that have not been agreed upon. (Please review *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil 5th Statement of Purpose and Approach before requesting non-RAJI instructions.) Recommended Arizona Jury Instructions (RAJI (Civil) 5th) need not be retyped but you may list them by name and number, such as:

RAJI Preliminary 1 - - Duty of Jurors
RAJI Standard 2 - - Burden of Proof
RAJI Negligence 1 - - Violation of Statute

NON-RAJI INSTRUCTIONS must be typed in Word format, numbered consecutively, one per page, with legal authority in support of the instruction. A CD or thumb drive of any non-RAJI instructions shall be provided to this Division. (No CD or thumb drive is required for RAJI instructions.)

- D. A brief statement of the claims for inclusion in RAJI Preliminary 14 – Claims Made and Issues To Be Proved.
- E. A stipulated brief summary of the case for the court to read during *voir dire*.
- F. A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced under Arizona Rule of Civil Procedure 32(a), together with any testimony to be offered by an opposing/other party. **Any objection not included is waived.** Jurors generally prefer narrative summaries or brief excerpts of questions and answers, so the parties should confer and prepare

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agreed-upon summaries. The order after the trial management conference will include a protocol for providing these deposition transcripts to the Court.

- G. A list of all marked exhibits containing a brief description of each exhibit and any objections to such exhibits. **Any objection not included is waived.**
- H. A single list in Word format of the names of the parties, party representatives, potential witnesses, experts, and any other person the parties want the Court to determine if potential jurors know. List the names in alphabetical order. Counsel must cooperate to create the list; do not provide separate lists. The parties must deliver this list to this division no later than 8:30 a.m. the morning of the Final Trial Management Conference. The Court will read this list to the panel during *voir dire*.

At the Final Trial Management Conference, counsel and any self-represented party who will try the case shall appear and be prepared to discuss and resolve:

- A. Allocation of trial time among the parties and, if appropriate, time limits for *voir dire*, opening statements, witness examinations, and closing arguments;
- B. Stipulations regarding witnesses testimony and the admission of exhibits;
- C. Jury instructions, juror notebooks, and verdict forms;
- D. Deposition summaries and excerpts from depositions including objections thereto;
- E. Scheduling, equipment, or interpreter issues;
- F. Status of settlement negotiations;
- G. Motions *in limine*; and
- H. Other matters addressed in the JPTS.

One day's jury fees will be assessed against the parties (evenly divided) unless the Court is notified of settlement by 2:00 p.m. on the judicial day before trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.3(d)

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PLEASE READ CAREFULLY THE FOLLOWING DUTIES PRIOR TO TRIAL

Discovery Disputes:

If a discovery dispute needs judicial intervention, the parties must first meet and confer (telephonically, if not in person). Absent resolution, counsel must jointly call my JA (Michael Fierro, 602-372-5945) and obtain a date and time for a telephonic conference. My JA will try to set a time within the next five judicial days. You must file a statement of the issue and your position, not to exceed three pages (1.5 pages per side). If a written discovery request is involved, such as an interrogatory or request for production, provide the discovery request and response. [This differs from Rule 26(d)(2).] Email this submission to my JA at least two judicial days before the conference at: (Michael.Fierro@JBAZMC.Maricopa.Gov).

Motions in Limine:

The granting or denial of a motion *in limine* turns on whether the admission of evidence reaches the level of reversible error or a mistrial. Motions *in limine* are not granted “except upon a clear showing of non-admissibility.” Do not file motions denominated as “*in limine*” that are really late-filed motions for summary judgment. *Each side is limited to five motions in limine without leave of Court to file more.*

1. Page Limit and Format: Neither the motion *in limine* nor the response may exceed **five pages**, including the caption. Motions *in limine* must be consecutively numbered in the caption identifying the party filing it and the subject of the motion (*e.g.*, “Defendant’s Motion in *Limine* No. 1 Re: Insurance Agreement”) and address one discrete subject per motion. Do not respond to more than one motion *in limine* in each response.

Any motion *in limine* or response to such a motion should begin with a simple declarative sentence that identifies the evidence that is the subject of the motion, with the understanding that the broader the scope of the evidence to be excluded, the less likely it is that the Court will grant a motion *in limine*. The remainder of the motion or response should then explain why a mistrial or reversible error would or would not result if the motion is denied, with citations to authority that have reached the same conclusion in the same or similar circumstances. If the motion is unable to explain why its denial would result in a mistrial or reversible error, the remainder should then demonstrate persuasively what efficiency, economy, or other benefit is to be gained by granting the motion.

2. Rule 7.2: File motions *in limine* in accordance with Arizona Rule of Civil Procedure 7.2. Before filing any motion *in limine*, the parties must meet and confer to attempt to resolve the

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issues. Motions *in limine* must include a certification that counsel conferred **at least telephonically, if not in person.**

3. Deadlines: The deadline for motions *in limine* is **30 days** before the final pretrial management conference. Responses are due **15 days** after service, and no replies should be filed unless requested.

4. Under Advisement: Although motions *in limine* will be considered as quickly as the court's schedule permits, they will not be taken under advisement any sooner than 15 days before the start of the trial, regardless of when they are filed. If the parties believe that a ruling on such a motion early in the case will facilitate settlement, they should notify this division (by telephone at (602) 372-5945 or e-mail to the judicial assistant) and every effort will be made to decide the issue as soon as time allows.

Miscellaneous Issues:

Any requests for interpreters, court reporters or video conference must be made at least two weeks prior to your hearing date.

If you ever email this division, you must copy all parties involved in the case.

NOTE: All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for up to three hours and \$280 for any hearing in excess of three hours. This fee does not include preparation of transcripts.

If you are not familiar with this division's electronic equipment, please make an appointment with this division's Court Assistant at least one week before your hearing.

ATTACHED: Witness Information Form
Exhibit Guidelines

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WITNESS INFORMATION FORM

WITNESSES FOR PLAINTIFF:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

PLAINTIFF'S TOTAL WITNESS TIME ESTIMATE: _____

WITNESSES FOR DEFENDANT:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

DEFENDANT'S TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF(S)		DEFENDANT(S)
VOIR DIRE			
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	

PLAINTIFF'S TOTAL TIME ESTIMATE: _____

DEFENDANT'S TOTAL TIME ESTIMATE: _____

NOTE: if there are multiple parties on the same side who are represented by different attorneys, then each party being represented by different attorneys shall fill out his/her own time estimates.

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EXHIBITS GUIDELINES

1. Exhibits will be marked consecutively. *The Clerk cannot reserve numbers for exhibits that will be provided at a later date.* Any missing Exhibits will not be considered and the numbers of all following Exhibits will be moved up. If Defendant's Exhibits are received prior to Plaintiff's Exhibits, the Clerk may mark them first.
2. Original Depositions will not be marked as an Exhibit. **Original** depositions to be used for impeachment purposes shall be provided to the Clerk on the first day of trial to be hand-filed.
3. Do not submit duplicate Exhibits, **it is essential that counsel confer to avoid submitting duplicate Exhibits.**
4. If large charts or blow-ups are anticipated to be used, please include a small version (or photo) which can be marked as the Exhibit. The charts and blow-ups are used for demonstrative purpose only, are not marked, and are returned to counsel.
5. Each multiple page exhibit **MUST** be securely stapled, binder clipped (only if staple does not hold), or secured with a paper file fastener. Binders are acceptable only if none of the above can securely hold the Exhibit. **DO NOT use paper clips or submit loose sheets of paper.**
6. Do not put numbers on the Exhibits themselves; instead, **use a Number Tab Divider.** Place the divider in front of each Exhibit, however, **DO NOT staple or paper-clip it to the Exhibit itself** (this should be the only loose item).
7. Counsel are to provide a workable list of Exhibits. The list should include a title or description of each Exhibit. (See blank sample of the following table as a reference).

Exhibit No.	Identified By	Description <i>Should be verifiable when viewing the first page of the exhibit</i>

8. A USB with the Exhibits shall also be provided for the Court's use during trial.
9. **The parties are strongly discouraged from marking Exhibits they do not anticipate offering during trial.**

For additional assistance in preparation of Exhibits contact the courtroom clerk at: **(602) 372-1153.**

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NOTE: The Arizona Constitution requires the Arizona Commission on Judicial Performance Review to conduct performance evaluations of superior court judges. The Commission is asking for your help to evaluate Maricopa County Superior Court judges currently undergoing performance review. After your hearing, if the judge you are in front of is undergoing review, a survey will be emailed to you and you can take the survey online. The survey is conducted by the Docking Institute of Public Affairs at Fort Hays State University and is anonymous and confidential. Your participation in the review process is important! More information on Judicial Performance Review can be found at www.azjudges.info.

La Constitución de Arizona exige que la Comisión de la Evaluación del Desempeño Judicial realice evaluaciones de desempeño de los jueces de los tribunales superiores. La comisión pide su ayuda para evaluar a los jueces del Tribunal Superior del Condado de Maricopa a quienes actualmente se les está evaluando su desempeño. Después de su audiencia, si el juez ante el cual comparece está sometido a una evaluación se le enviará por correo electrónico una encuesta que usted podrá tomar por Internet. La encuesta es realizada por el Docking Institute of Public Affairs de la Fort Hays State University y se mantiene anónima y confidencial. ¡Su participación en el proceso de la evaluación es importante! Para obtener más información sobre la evaluación del desempeño judicial, diríjase a www.azjudges.info.